REGISTERED No. D. 221.

The Gazette of India

EXTRAORDINARY

PART II—Section 3

PUBLISHED BY AUTHORITY

No. 14] NEW DELHI, THURSDAY, JANUARY 21, 1954

ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 8th January 1954

S.R.O. 235.—Whereas the election of Shri Man Singh, as a member of the Legislative Assembly of the State of Rajasthan, from the Jamuwa-Ramgarh Constituency of that Assembly, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Roop Chandra Sogani, S/o. Shri Joharilalji, Moti Singh Bhomia Road, Jaipur and Shri Mangilal, S/o Shri Chhaganlal, Village Paleda, Tehsil Jamuwa-Ramgarh;

And whereas the Election Tribunal appointed by the Election Commission in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

IN THE ELECTION TRIBUNAL, JAIPUR

ELECTION PETITION NO. 227/7 OF 1952

Shree Roop Chandra Sogani and another—*Petitioners.*

Versus

Rawat Man Singh and others—*Respondents.*

PRESENT:

The Hon'ble Mr. Justice K. K. Sharma, *Chairman.*

Mr. A. N. Kaul, *Member.*

Mr. P. L. Shome, *Member.*

Mr. G. C. Kasliwal for respondent, No. 4, Mr. Amritlal Jain.

Mr. H. P. Gupta for the respondent, No. 1.

ORDER

Dated 2nd December, 1953

This election petition was filed by Shree Roop Chandra Sogani, (hereinafter to be referred to as Mr. Sogani) who was a candidate for election to the Rajasthan Legislative Assembly from the Jamuwa Ramgarh Constituency, and one Mangi Lal, an elector of the said Constituency, for setting aside the election of Respondent No. 1, Rawat Man Singh, to the Rajasthan Legislative Assembly from the Jamuwa Ramgarh Constituency at the last General Elections.

The petitioners' case was that the nomination paper of Mr. Sogani was improperly rejected by the Returning Officer on the ground that the name of the Assembly was not entered in the nomination paper. It was averred that this improper rejection of the nomination paper had materially affected the result of the election, and, therefore, the election was void, and should be set aside. One other ground was also taken that the returned candidate, Rawat Man Singh, (hereinafter to be referred to as respondent No. 1) was a Jagirdar, and consequently held an office of profit, and was, therefore, disqualified from standing as a candidate. It was averred that the result of election had been materially affected by this improper acceptance of his nomination paper, as well.

A number of objections were taken by the respondent No. 1. Mr. Govind Narain Jhalani (hereinafter to be referred to as Mr. Jhalani), Mr. Kanhaiyalal Saxena (hereinafter to be referred to as Mr. Saxena), and Mr. Amritlal (hereinafter to be referred to as respondent No. 4) did not file any reply.

The following issues were raised on the reply filed by respondent No. 1:—

"1. Whether the petitioner No. 1's nomination paper was improperly rejected because the name of the State Legislative Assembly for which the petitioner stood as a candidate was not mentioned therein?

2. If so, whether the result of election has been materially affected by this rejection?

3. Whether the respondent No. 1 held an office of profit within the meaning of Article 191 of the Constitution of India and was as such disqualified for standing as a candidate to the Legislative Assembly?

4. If so, whether the result of election has been materially affected by the acceptance of the nomination paper of respondent No. 1?

5. Whether the election petition is bad having been made jointly by a candidate and an elector?

6. Whether this Tribunal is not properly constituted?"

So far as issue No. 6 is concerned, this Tribunal has already decided it by its judgment, dated 21st January, 1953, which is annexed hereto and marked "Annexure A".

After the framing of the issues Mr. Sogani as well as respondent No. 1 filed their lists of witnesses, but thereafter Mr. Sogani became absent. As it was found that the other petitioner, Shri Mangi Lal, had not been served, it was ordered on the 16th of February, 1953, that the case be taken up on the 27th of February, 1953, after notice to Shree Mangi Lal. Shree Mangi Lal, after service, did not appear on the 27th February, 1953, nor did Mr. Sogani appear; but his counsel obtained an adjournment on the ground that he wanted to ascertain from Mr. Sogani whether he would like to prosecute the case. Time was given upto 5th March, 1953, for the same, but that day counsel of Mr. Sogani made a statement that he had no instructions from him. An application was filed by Mr. D. L. Bhargava, Advocate, on behalf of Mr. Sogani only for the cancellation of the Vakalatnama of Mr. Sogani in favour of Mr. B. S. Sharma and Mr. D. M. Bhandari, counsel who represented him till then. An application was, however, made by respondent No. 4 on that day praying that he be transposed as petitioner or, in the alternative, allowed to prosecute the election petition, and the *ex parte* order, which had been made against him, be set aside. An objection was taken at once by Mr. H. P. Gupta, counsel for respondent No. 1, to the application of respondent No. 4, and it was prayed that the petition be dismissed for default. The application of respondent No. 4 and the objection of respondent No. 1 were heard, and decided by the judgment of this Tribunal, dated 31st March, 1953, annexed hereto as "Annexure B". Although respondent No. 4 was not transposed as petitioner, yet he was allowed to prosecute the petition. Against this order, the respondent No. 1 filed an application for a writ, order or direction under Article 226 of the Constitution of India, but the same was dismissed by the Hon'ble Rajasthan High Court, Jaipur, on 20th October, 1953. An application for leave to appeal to the Supreme Court was filed in the Hon'ble High Court by the respondent No. 1, but that was also dismissed.

Now we have recorded the evidence produced by respondent No. 1 as well as respondent No. 4. Issues Nos. 3, and 4 were not pressed by learned counsel for respondent No. 4, and issue No. 5 was not pressed by learned counsel for respondent No. 1. Hence, they need not be discussed, and are decided against the respondent No. 4 and respondent No. 1 respectively. Only issues Nos. 1 and 2 have been contested and evidence has been produced thereon, and we proceed to decide them.

Issue No. 1.—The nomination paper, which was rejected, has been filed, and it shows that the only mistake, if at all, of Mr. Sogani was that he did not enter the word "Rajasthan" before the words "Vidhan Sabha" (Legislative Assembly) at the top of the nomination paper. There four Houses are mentioned. The first is Lok Sabha (House of the People), the second Vidhan Parishad (Legislative Council), the third Vidhan Sabha (Legislative Assembly), and the fourth is Electoral College, meant for some of the Part C States. The first two, that is Lok Sabha and Vidhan Parishad have been scored out in the nomination paper, and the fourth that is Electoral College has also been scored out. The words "Vidhan Sabha" have, however, not been scored out, and before them the word "Rajasthan" has not been added. Objection seems to have been taken before the Returning Officer that this was a fatal defect within the meaning of section 36 of the Representation of the People Act (hereinafter to be referred to as the Act). This objection found favour with the Returning Officer, and he made the following order:—

> "The name of the Legislative Assembly has not been given. Hence rejected."

This order is dated 26th November, 1951.

It was argued by Mr. G. C. Kasliwal that in the first instance it was not a defect, as by the footnotes under the Form of Nomination paper given in Schedule 2 to the Act it was nowhere enjoined that a candidate should write out the name of the State against the words "Vidhan Parishad" (Legislative Council) and "Vidhan Sabha" (Legislative Assembly). Moreover, it was argued that even if it were a defect, it was a very technical defect, and not a defect of a substantial character. The Returning Officer was, therefore, not justified in refusing the nomination paper on this ground.

On behalf of respondent No. 1 it was argued that under section 36 (2) (d) a nomination paper could be rejected if there had been any failure to comply with any of the provisions of section 33 or 34, and under section 33 (1) a candidate is required to file a nomination paper completed in the prescribed form, and the nomination paper could not be said to have been completed in the prescribed form when the name of the State for the Legislative Assembly of which Mr. Sogani stood was not mentioned in the nomination paper. It was argued that the words of section 33 (1) were mandatory, and the defect was, therefore, not a merely technical defect, but a defect of substantial character.

We have considered the arguments of both the learned counsel. We do not wish to say whether it was a defect or not to omit to write the name of the State for the Legislative Assembly of which Mr. Sogani had stood as a candidate; but we are perfectly convinced that the defect, if at all, was a mere technical defect, and not a defect of a substantial character. The omission of the name of the State could not in any way mislead the Returning Officer. The Returning Officer was only for the Constituencies of Rajasthan Legislative Assembly and not for the House of People or any other House. In the nomination paper, all other Houses excepting Vidhan Sabha have been scored off. He could, therefore, be sure that Mr. Sogani was standing as a candidate for Legislative Assembly only. As the Returning Officer was a Returning Officer of the Rajasthan Legislative Assembly, he could not by any means conceive that the nomination paper, which was filed before him, was in relation to the Legislative Assembly of some other State, as for example, Madhya Bharat, Orissa etc. In the body of the nomination paper, item No. 1, the name of the Constituency was given as Jamuwa Ramgarh, which was a Constituency of Rajasthan Legislative Assembly. To our mind, the Returning Officer was too technical in rejecting the nomination paper on the ground on which he did. The rejection was, in our opinion, therefore, altogether improper. The issue is decided in favour of the petitioner and respondent No. 4, and against the respondent No. 1.

Issue No. 2.—This issue has been very hotly contested. On behalf of the petitioner it was argued that once the Tribunal finds that a nomination paper has been improperly rejected, there is a very strong presumption that the result of the election has been materially affected. Some of our decisions were placed before us in support of this view. They are the decisions in the cases of:

1. Pt. Lakshmi Chand *vs.* Shri Ladhu Ram Chodhri and others (Election Petition No. 8 of 1952), published in the Rajasthan Gazette, Extraordinary, Vol. V, No. 202, Part I, dated March 6, 1953, page 1067,
2. Pt. Harish Chandra, *vs.* Raja Man Singh and others (Election Petition No. 6 of 1952), published in the Rajasthan Gazette, Extraordinary, Vol. 5, No. 20, Part I, dated May 1, 1953 page 67.

3. Ram Singh, *vs.* Shri Hazari Lal and others (Election Petition No. 1952), published in the Rajasthan Gazette, Extraordinary, Vol. 5 No. 49, Part I, dated July 6, 1953, page 341.

In the first and third case mentioned above, elections were set aside on the ground that the improper rejection of the nomination papers had materially affected the result of the elections. In case No. 2, election petition was dismissed on the ground that the improper rejection of the nomination paper had not materially affected the result of the election. In all these cases the principle laid down was that in case the nomination paper of a candidate is improperly rejected, there will be a strong presumption in favour of the result of the election having been materially affected. It was, however, held that the presumption was capable of rebuttal although by strong evidence. In cases Nos. 1 and 3 no such evidence was forthcoming, and, therefore, it was held that the presumption was not rebutted. In the second case, however, the evidence was considered to be sufficient to rebut the presumption, and, therefore, the election petition was dismissed. So far as, therefore, this Tribunal is concerned, it has been consistently held that there is a strong presumption in favour of the result of the election being materially affected in case the nomination paper is improperly rejected, but it can be rebutted by strong evidence. There are two other cases decided by two different Tribunals in Rajasthan, *viz.*, the Election Tribunal at Bikaner and the Election Tribunal at Kotah, in which the same view has been taken. They are the cases of,

1. Chander Nath, *vs.* Kunwar Jaswant Singh and others, (Election Petition No. 226 of 1952), before the Election Tribunal, Rajasthan, Bikaner, published in the *Gazette of India, Extraordinary*, Part II, Section 3, dated January 20, 1953, No. 21, page 165,
2. Seth Bhanwarlal Sogani, *vs.* Shri Damodar Lal Vyas and others (Election Petition No. 229 of 1952), before the Election Tribunal, Kotah, published in the Rajasthan Gazette, Extraordinary, Vol. 5, No. 59, Part I, dated July 28, 1953, page 511.

In both these cases evidence produced was found to be sufficient to rebut the initial presumption in favour of the rejected candidates, and the election petitions were dismissed. In a case before the Jullundur Tribunal, Prem Nath *vs.* Ram Kishan (Election Petition No. 232 of 1952) published in the *Gazzette of India, Extraordinary*, Part II, Section 3, No. 173, dated December 19, 1952, page 1017, also the same principle was laid down, and the evidence being considered sufficient to rebut the presumption, it was held by a majority of 2:1 that in case the nomination paper were held to have been improperly rejected, the rejection did not materially affect the result of election. The third Member, Mr. Pannun, did not agree. The only discordent note was sounded by the Lucknow Tribunal in Braj Naresh Singh, *vs.* Hon'ble Shri Thakur Hukam Singh and others (Election Petition No. 208 of 1952), published in the *Gazette of India Extraordinary*, Part II, Section 3, No. 174, dated December 20, 1952, page 1029, in which it was held that the presumption was incapable of rebuttal, and no evidence whatsoever could be produced to rebut it. That decision has, however, been discussed by us in the case of Pt. Harish Chandra *vs.* Raja Man Singh and others, cited above, and we still hold the same opinion that the presumption is not irrebutable. In view of our decisions in the three cases mentioned above, learned counsel for respondent No. 4 himself did not much emphasis upon the view taken by the Lucknow Tribunal, and argued the case taking the view held by us in the aforesaid three cases as sound.

Coming to the evidence, it was argued by Mr. Kasliwal that there was no strong evidence to rebut the presumption raised in favour of the petition. It was argued that the witnesses, who were produced, were only from a part of the Constituency, and had given, more or less, their opinions, excepting in one or two matters, as for evample, the addressing of the meetings convened by the Congress by Mr. Sogani, and certain talks said to have taken place between Mr. Sogani and the witnesses or in their presence.

On behalf of respondent No. 1 it was argued that the evidence was all one way, and it was quite sufficient to rebut the strong presumption raised in favour of the petitioner. It was argued by Mr. H. P. Gupta on behalf of respondent No. 1 that the evidence of the witnesses established four things:—

1. That after Shri Hira Lal Shastri resigned from the Congress in the year 1951, he formed a party of his own, namely, Praja Party, and Mr. Sogani and Mr. Jhalani were both the followers of Shri Shastri.

2. That Mr. Sogani was a covering candidate for Mr. Jhalani, and would have withdrawn from the contest even if his nomination paper had been accepted, in case Mr. Jhalani's nomination paper was accepted.

3. That Mr. Sogani canvassed for Mr. Jhalani throughout the election.

4. That Mr. Sogani had no influence in Jamwaramgarh Constituency, and had absolutely no chance against respondent No. 1.

We have considered the arguments of both the learned counsel. We find from the written reply of the respondent No. 1, which was filed as far back as 5th January, 1953, that he had raised the point that Mr. Sogani was only a covering candidate of Mr. Jhalani, and even if the nomination of Mr. Sogani had been accepted, he would not have contested the election, and would have withdrawn his candidature. It has also been expressly pleaded that Mr. Sogani, his friends and relatives had throughout the election been present in the constituency, and had canvassed and exercised their influence for Mr. Jhalani, and in spite of the combined efforts of the petitioner and Mr. Jhalani, the latter lost very badly, that Mr. Sogani had in fact no influence in the Constituency, and was unknown to the electors of the Constituency, and that the petition was filed simply to harass the respondent No. 1. We may first of all mention that the entire electorate in the Constituency numbered about 65,000, out of which about 14,000 voted. Out of the 14,000 voters, about 7,400 voted for respondent No. 1, while about 4,200 voted for Mr. Jhalani and about 1,800 for Mr. Saxena, the third contesting candidate. Mr. Amrit Lal Jain had withdrawn his candidature after his nomination paper was accepted, and the nomination paper of another Mr. Kanhaiyalal had been rejected. Thus only three candidates were left in the field, who got the above number of votes. Mr. Saxena lost even his security. All this is quite clear from the unrebutted evidence of respondent No. 1, which could be easily rebutted by the petitioner by filing the election returns. Rawat Man Singh, while in the witnesses box, appeared to us to be quite a frank and straightforward witness, and he did not exaggerate or mince matters. For many things he could have stated that he had personal knowledge, but he frankly stated that he had none. His demeanour was not that of a witness who stretches everything in his favour. We are, therefore, perfectly satisfied that the number of votes given by him above is perfectly correct. It would thus be found that there was a very wide margin of votes between Mr. Jhalani and respondent No. 1, and Mr. Jhalani was defeated by about 3,200 votes. It was not contended on behalf of respondent No. 4 that Mr. Sogani, if he had been allowed to contest would have got more votes than respondent No. 1 got. It has also not been contended that Mr. Sogani would have been able to bring to poll many of the voters who did not exercise their franchise. All that has been argued is that he would at least have been able to filch away a large number of votes from among the votes cast in favour of respondent No. 1, and would have thus enabled Mr. Jhalani to come out successful. With the background of the votes cast in favour of each of the three contesting candidates, we have to examine if the four points raised by the learned counsel for respondent No. 1, stated above, have been satisfactorily made out by the evidence on record. To our mind, if these points are made out, then with the background of the number of votes cast in favour of all the three contesting candidates it would be difficult to hold that the result of election has been materially affected.

Coming to the four points raised by Mr. H. P. Gupta, the first is that Mr. Jhalani and Mr. Sogani belonged to one political group, and there was no likelihood of their contesting against each other. The evidence on this point is that of Mr. Gopi Nath Gupta, R. 1/W. 14, and Mr. Shyam Behari Lal Saksena, Advocate, R. 1/W. 6. Mr. Gopi Nath was a private secretary of Mr. Hira Lal Shastri. He has stated that both Mr. Sogani and Mr. Jhalani left Congress when Mr. Shastri left it in 1951. He has stated that Mr. Jhalani was for some time Head Master of Vanasthali Vidya Pith, founded and run by Mr. Shastri, and he became its principal, when its status was raised to an Inter College. He has further said that before the General Elections, Mr. Hira Lal Shastri was called to Delhi, and thereafter a compromise was arrived at, according to which 12 to 13 persons belonging to Mr. Shastri's party were given Congress ticket, and that one of these 12 to 13 persons was Mr. Jhalani. Mr. Shyam Behari Lal Saksena has also stated that Mr. Sogani and Mr. Jhalani both belong to Shastri group, and that Mr. Sogani was the chief man of Shastri group, and could not stand against the Congress. The respondent No. 4 has admitted in his evidence that Mr. Jhalani, Mr. Sogani and Mr. Hiralal Shastri were first members of the Prajamandal, and then became members of the Congress, and that both Mr. Sogani and Mr. Jhalani left Congress before the General Elections. He has also admitted that Vanasthali Vidya Pith was founded and is being run by Mr. Hira Lal

Shastri. He has also admitted that after leaving the Congress party, Mr. Hira Lal Shastri formed a party of his own, and that Mr. Jhalani joined that party wh it was formed. He further admitted that there was some compromise betwe the Congress party and the Praja Party for the purposes of the last General Elections, and as a consequence of that compromise Mr. Jhalani was given the Congress ticket for a seat in the Rajasthan Assembly. It is clear from all this evidence, especially from that of Mr. Shyam Behari Lal Saxena, who is an Advocate of standing, and whose evidence there is no reason to disbelieve, that Mr. Jhalani and Mr. Sogani both belonged to Shastri group. It will also be clear when the other three points are discussed presently that Mr. Sogani was very much interested in the return of Mr. Jhalani and worked seriously for him. The first point is, therefore, to our mind, made out very satisfactorily in favour of respondent No. 1.

Coming to point No. 2, there is the evidence of Mr. Gopi Nath, which shows in an unambiguous manner that Mr. Sogani had told him that if Mr. Jhalani's nomination paper were accepted, he would withdraw in his favour. He was cross-examined with great zeal on this point, but he maintained that he was positive that Mr. Sogani had told him so. He also stated that Mr. Sogani gave his reason for his intention for withdrawing that he did not think it necessary to stand when Mr. Jhalani was contesting the election. From his position as private secretary of Mr. Shastri at the material time, this witness had every opportunity of knowing what was the understanding between Mr. Jhalani and Mr. Sogani. Mr. Shyam Behari Lal, witness No. 6 for respondent No. 1, also stated that because his nephew Kanhaiyalal Saxena was standing as one of the candidates from the same Constituency, he approached Mr. Sogani a week before the date of filing of nomination papers, and asked him whether he was seriously contesting the election, and he replied that he was not serious about the election, and that it was Mr. Jhalani who would contest the election on behalf of the Congress Party. He has further stated that he met Mr. Sogani in the evening of the day when the nomination papers were filed, and at that time Mr. Sogani told him that it was only by way of joke that he had his nomination paper. Of course, Mr. Shyam Behari Lal has not stated that he knew or was told that Mr. Sogani would withdrew in favour of Mr. Jhalani even if his nomination paper were accepted, yet his statement gives great support to the statement of Mr. Gopi Nath, and at any rate shows that Mr. Sogani was not at all serious for contesting the election.

Adverting to point No. 3, a number of witnesses have been produced on behalf of the respondent No. 1 to show that Mr. Sogani was canvassing support for Mr. Jhalani after the nomination paper of Mr. Jhalani was accepted and Mr. Sogani's nomination paper was rejected. For this the evidence is of Hanuman Sahai, Ummaid Singh, and Suraj Narain. All these three witnesses say that a Congress meeting was convened at Bagwara in support of Mr. Jhalani, and that meeting was addressed, among others, by Mr. Jhalani, Mr. Sogani, and Mr. Suraj Narain. They have all stated that all the speakers exhorted the audience that votes should be cast in favour of the Congress candidate. It has not been contended on behalf of respondent No. 4 that the evidence of these witnesses if false. Only it has been argued that they belong to one village only, and the conditions prevailing in one village only could be no guide to the conditions prevailing all over the Constituency. This will be seen later on, but it is perfectly clear that Mr. Sogani addressed public meetings in favour of Mr. Jhalani at Bagwara. Similarly, the evidence of Suraj Narain shows that at Achrol also Mr. Sogani came in connection with election propaganda for Mr. Jhalani, and that he asked him to work for Mr. Jhalani. Similarly, there is the evidence of Bhonrilal, a resident of Daulatpura, which shows that Mr. Jhalani and Mr. Sogani both went to his village together, and asked for votes for Mr. Jhalani. There is the evidence of another witness, Prabhu Singh, who is a resident of Chandwaji. He stated that a Congress meeting was convened in support of Mr. Jhalani, and it was addressed, among others, by Mr. Jhalani, and Mr. Sogani, and all of them exhorted the voters to vote for the Congress. His evidence also shows that once more Mr. Sogani was seen in that village after he had addressed the meeting and before polling canvassing support for Mr. Jhalani. There is a witness from Manpura, named Bal Singh, who, has stated that Mr. Jhalani and Mr. Sogani both visited his village in connection with the election, and that they had come to ask for vote for the Congress, but he told them that his village had decided to vote for Ram Rajya Parishad. The evidence discussed above has not been criticised as false, and there, is no reason to disbelieve the statements of all these witnesses. It was, however, argued, as has been said above, that they were all from a certain sector of the Constituency, and the evidence coming forward from that sector could not throw any light as to what was happening in the rest of the constituency.

It be true, but it is clear that in a number of villages Mr. Sogani canvasse sup t for Mr. Jhalani, and even addressed meetings. This shows that M Sogani was very much interested in Mr. Jhalani. This circumstance read conjunction with the evidence discussed above, goes to support the case respondent No. 1 that Mr. Sogani was not a candidate, who was serious about election, but had been put up simply to enable a man of Mr. Hira Lal Sha party to contest the election, in case Mr. Jhalani's nomination paper was re

Coming to the fourth point, there is no evidence on record whatsoever that Mr. Sogani wielded any influence in Jamwaramgarh constituenc evidence is the other way that he was not even known in many of th of the constituency. Mr. Sogani is a resident of Jaipur City and was of the Jaipur City Congress Committee. Although he was a mem Representative Assembly of the old Jaipur State, yet it has been pr evidence of respondent No. 1 that he had been elected from Amber Thus it appears that Mr. Sogani had not much influence in Jamwarar tuency, even if he had any influence at all. As an independent Sogani had hardly any chance of getting any substantial number constituency, even if he had contested the election, much less a ferring about 1,600 votes out of the votes cast in favour of re Mr. Jhalani in order to tilt the balance in favour of Mr. Jhalani Mr. Jhalani had stood as a candidate on behalf of the Congre old Jaipur State he had been elected from the Jamwaramg the Legislative Council. If with the support of Mr. Sogani a member, who had previously been returned to the Legi old Jaipur State, was defeated by as many as 3,200 votes No. 1, what chance could there be for Mr. Sogani to ma of the election. We have no hesitation in holding that the present case, the result of the election has not at al by the rejection of the nomination paper of Mr. Sogani

The petition is, therefore, dismissed, but as it has been held in favour of the petitioner and respondent No. 4 that the nomination p aper was improperly rejected, the parties shall bear their own costs.

(Sd.) KUMAR J. K. SHARMA, *Chairman.*
(Sd.) ANAND NARAIN KAUL, *Member.*
(Sd.) P. L. SHOME, *Member.*

The 2nd December, 1953.

ANNEXURE "A"

IN THE ELECTION TRIBUNAL, JAIPUR

ELECTION PETITION No. 7 OF 1952

ri Roop Chandra Sogani *Vs.* Rawat Mansingh and others).

Objection by Rawat Man Singh, respondent No. 1, regarding the Constitution of the Tribunal.

PRESENT:

The Hon'ble Mr. Justice K. K. Sharma—*Chairman.*

Mr. A. N. Kaul—*Member.*

Mr. P. L. Shome—*Member.*

Mr. H. P. Gupta, for Rawat Man Singh, respondent No. 1.

Shri Roop Chandra Sogani in person.

Mr. K. S. Hajela, Advocate-General, Rajasthan.

ORDER

Dated the 21st January, 1953

By the Tribunal (Per Hon. Mr. Justice K. K. Sharma).

An objection has been taken in his written statement by Rawat Man Singh, respondent No. 1, to the constitution of this Tribunal. It is embodied in para. 17 of the additional pleas, and is to the following effect:—

(a) That on the resignation of Shri K. C. Gupta from Chairmanship of the Tribunal, the Tribunal ought to have been reconstituted, and not that Mr. Justice K. K. Sharma should have been appointed as Chairman in his place.

(b) That there cannot be any Tribunal without Chairman, and in be en the period from the resignation of Shri K. C. Gupta upto the ap t- ment of Mr. Justice K. K. Sharma, only a member, namely, Shri A. N. Kaul, could not constitute the Tribunal, and could not keep it alive.

(c) That Shri A. N. Kaul was appointed a member before the appointment of the present Chairman and the member Shri P. L. Shome, while according to law no member can be appointed before the appointment of a Chairman.

(d) That the two Members of the Tribunal could not be separately appointed by two different orders of different dates. The appointment of Shri A. N. Kaul and Shri P. L. Shome should have been made by one order.

We have heard Mr. H. P. Gupta on behalf of the respondent, Rawat Man Singh, in support of the objection. We have also heard the petitioner. Shri Roop Chandra Sogani, in person. We have also heard Mr. K. S. Hajela, the Advocate-General of the State, whom we required to attend under section 89 of the Representation of the People Act, 1951, at the time of the hearing of the objection, considering the importance of the objection.

The argument of Mr. H. P. Gupta is that under section 86(3) of the Representation of the People Act, 1951, (hereinafter to be referred to as the Act), every Tribunal appointed under sub-section (1) of the said section shall consist of—

(a) a Chairman who shall be either a person who is or has been a judge of a High Court.....

(b) two other members of whom one shall be selected by the Election Commission from the list maintained under clause (a) of sub-section (2) of section 86 and the other shall be selected by it from the list maintained under clause (b) of that sub-section.

According to him, the wordings of sub-section (3), clauses (a) and (b), read with the second proviso to the said sub-section, which lays down that nothing in the said sub-section shall be deemed to prevent the appointment of a Chairman of the Tribunal before that of the other members, show that a Tribunal cannot be appointed unless a Chairman is appointed. Thereafter the other two members ought to be appointed at one and the same time. If a member of the Tribunal is appointed before a Chairman is appointed, his appointment is null and void, and the Tribunal cannot validly come into existence, even by the appointment of a Chairman afterwards. If a Chairman vacates office, the whole of the Tribunal is dissolved, and unless the appointments are made afresh of the two other members after the appointment of the new Chairman, a valid Tribunal cannot come into existence. In this case it is argued that after Mr. K. C. Gupta, the former Chairman, vacated office, the whole of the Tribunal was legally dissolved, and Mr. A. N. Kaul did not remain a member of the Tribunal. After the appointment of the present Chairman the appointment of Mr. A. N. Kaul ought to have been made afresh, and at the same time the appointment of the Advocate member ought also to have been made. The fact that after the appointment of the present Chairman, the appointment of Mr. A. N. Kaul was not made afresh and the appointment of the Advocate member alone was made subsequently, makes the Tribunal improperly constituted. It has, therefore, no jurisdiction to proceed with the case.

It has been argued by the petitioner on the contrary that there is nothing in the Act to show that the Chairman as well as the two other members ought to be appointed at one and the same time. The wordings of the second proviso to sub-section (3) of section 86 show, without doubt, that a Chairman can be appointed before any other member is appointed. There is also nothing to show that the two other members ought to be appointed by one and the same order, or that after a previous Chairman vacates office or becomes incapable of acting as Chairman, the whole Tribunal is dissolved, and the appointment of the other members ought to be made afresh after the appointment of the new Chairman. It has been argued that similar words as appear in sub-section (3) of section 86 of the Act occurred in section 220, clause (1) of the Government of India Act, 1935, which provided that "every High Court..... shall consist of a Chief Justice and such other judges as His Majesty may from time to time deem it necessary to appoint". Chief Justice Sir Courtney-Terrell of the Patna High Court unfortunately died when he was in England on leave. Before another Chief Justice was appointed in his place, an objection was taken by one of the parties that the Bench of the High Court, which had heard the case, could not pronounce judgment therein as the High Court was not in existence on that day on account of the death of the Chief Justice and in the absence of the appointment of another Chief Justice in

place. It was held that it was wrong to say that during the interval, no properly constituted High Court remained, (*vide* Emperor V. Sohrai Koeri and another*).

The learned Advocate-General also took up the same line of arguments, which was adopted by the petitioner.

After carefully considering the arguments on behalf of both the sides, we are unable to uphold the objection raised by respondent No. 1. Section 86, sub-section (1), provides that the Election Commission shall appoint an Election Tribunal for the trial of an election petition, if the petition is not dismissed under section 85. Sub-section (3) of the said section says that every Tribunal which is appointed under sub-section (1), shall consist of a Chairman and two other members. There is no provision in the Act which goes to show that after the Chairman of a Tribunal appointed under section 86 relinquishes his office, the Tribunal ceases to exist, although the other members do not give up their office. In such a case, only the office of the Chairman becomes vacant, and the vacancy can be filled up by the appointment of any person who is entitled to become a Chairman under sub-section (3)(a) of section 86. It is wrong to say that the Tribunal ceases to exist as soon as the Chairman or any one of its members relinquishes his office or is otherwise incapable of sitting on the Tribunal. Under section 14(1) of the General Clauses Act, where, by any Central Act or Regulation made after the commencement of the Act any power is conferred, then, unless a different intention appears, that power may be exercised from time to time as occasion requires. The Representation of the People Act 1951 is a Central Act, therefore, the provisions of the General Clauses Act apply to it. The Election Commission has been given the power by section 86 to appoint a Chairman and two other members of an Election Tribunal. It has, therefore, the power to exercise that power of appointment from time to time as occasion requires. On the relinquishment of his office by Mr. K. C. Gupta, who was appointed as Chairman by the Election Commission, the Election Commission had the power to make a fresh appointment in his place. The appointment of the present Chairman, therefore, after the relinquishment of office by Mr. K. C. Gupta was validly made. On the relinquishment of his office by Mr. K. C. Gupta, the case arose only of a vacancy in the Chairmanship of the Tribunal. The Tribunal did not automatically come to an end on the relinquishment of his office by the former Chairman. Mr. A. N. Kaul, therefore, who was appointed one of the other two members by the Commission, did not cease to be a member of the Tribunal by reason of the relinquishment of his office by Mr. K. C. Gupta. The provisions of sub-section (3) of section 86 are similar to those of clause (1) of section 220 of the Government of India Act, 1935. Only the word "Chairman" is used in place of the words "Chief Justice", and "two other members" in place of "such other Judges". After a criminal case had been heard by a Division Bench consisting of Manohar Lall and Chattarji J. of the Patna High Court (Emperor V. Sohrai Koeri and another), and before the judgment was pronounced, Sir Courtney-Terrell C. J., who was in England on leave unfortunately died. No other Chief Justice having been appointed either substantially or to act in his place, the counsel for the accused took an objection that the Bench could not proceed to deliver the judgment, as no High Court was in existence on the date fixed for the pronouncing of the judgment on account of the death of the previous Chief Justice and the non-appointment of any other Chief Justice in his place. This objection was, however, repelled, and it was observed that

> "In the case of a vacancy caused by death, some time must necessarily elapse before a new appointment is made. It will be preposterous to hold that during that interval there is no properly constituted High Court. The vacancy in any office implies that the office exists. Vacancy must be distinguished from abolition of the office. When a Chief Justice dies the office does not die with him but still continues. It only remains vacant until it is filled up."

It was further observed that

> "So long as the office is not abolished the constitution remains unbroken and unchanged. The only effect of the vacancy in the office of Chief Justice, so long as it continues, is that there will be nobody to perform his duties unless the Governor General appoints some one of the other Judges to do the same."

Similarly, in the present case, the Tribunal did not cease to exist simply by reason of the vacancy having occurred by the relinquishment of his office as Chairman by Mr. K. C. Gupta. The Tribunal remained in existence, and Mr. A. N. Kaul remained to be a member of it. Only there was nobody to perform the duties of

*A.I.R. 1938 Patna 550.

the Chairman during the interval between the relinquishment of his office by Mr. C. Gupta and the appointment of the present Chairman. Mr. A. N. Kaul, howe did not do any work of the Tribunal during that interval. If he had done it, question could have been raised as to whether it was validly done.

Moreover, in the notification dated 19th September, 1952, by which the present Chairman was appointed, it has clearly been mentioned that the appointment of the new Chairman was made in partial supersession of the notification dated 31st July, 1952, appointing Mr. K. C. Gupta as the Chairman and Mr. A. N. Kaul as one of the other members of the Election Tribunal. This clearly shows that the appointment of Mr. A. N. Kaul to the Tribunal was reaffirmed, and the notification was only partially superseded in so far as the post of Chairman was concerned. It may be noted also that once a person is appointed as a member of a Tribunal, there is no provision in the Act for his removal, except by his own act of relinquishment of membership or by some act of God making it impossible for him to perform his functions. Mr. A. N. Kaul, therefore, once having been appointed a member, continued as such, whatever other changes there might have been in the constitution of the Tribunal. We are, therefore unable to hold that there is no legal appointment of Mr. A. N. Kaul to this Tribunal, and, therefore, it is not validly constituted.

Our attention was drawn to sub-section (4) of Section 86 of the Act in order to show that the provision for the filling up of the vacancy in the membership of the Tribunal during the course of the trial has been made, but not for the filing up of the vacancy in the post of the Chairman. It, was, therefore, argued that if the Chairman went out of the Tribunal either by death or relinquishment of his office or for some other reason, the Tribunal itself ceased to exist, and no question of the filling up of the vacancy of the Chairman arose. In such a case the Tribunal should be constituted afresh. We are unable to agree with the contention of the learned counsel for the respondent that the word "member" in sub-section (4) of section 86 of the Act refers only to one of the two other members and not to the Chairman. The Chairman of an Election Tribunal is just as such a member of any of the other two members. If it were not so, the word "other" in clause (b) of sub-section (3) of section 86 would have been redundant. If the Chairman were not to be deemed to be one of the members of the Tribunal, the words in clause (b) would have been "two members" and not "two other members". The use of the word "other" clearly shows that the Chairman is also considered to be one of the members of the Tribunal.

It was further argued that a provision had been made specifically for the filling up of the vacancy during the course of the trial, but no such provision had been made for the filling up of the vacancy before the trial begins. It should, therefore, be taken that the Legislature did not intend that any vacancy should be filled up before the trial began, and that the intention was that by dint of one or two vacancies, the whole of the Tribunal came to an end, and, therefore, a fresh Tribunal had to be appointed. This argument does not appear to have any force. As has been said above, under section 14(1) of the General Clauses Act, any power conferred under any Central Act may be exercised from time to time as occasion requires. If two members of a Tribunal are appointed, and vacancy occurs in the post of one member only, the occasion requires that that vacancy should be filled up, and not that the appointment should be made to the other post as well, which has not fallen vacant. It does not sound reasonable to suggest that every time a vacancy occurs, the appointment should be made of the entire Tribunal and it should be repeated again that the other member or members, who have not relinquished office or have not become incapable of functioning, are appointed members of the Tribunal. If the Legislature had intended anything like that, it would have been clearly mentioned that before the trial begins the Election Tribunal ceases to exist as soon as a vacancy arises in the post of the Chairman or one of its other members, and that the Tribunal shall be constituted over again, and members appointed to it afresh. The reason why a specific provision has been made in the case of a vacancy during the trial is that unless it is specifically provided that on the new member joining the Tribunal, the trial shall be continued as if he had been on the Tribunal from the commencement of the trial, trial *de novo* might become necessary. By mentioning that the vacancy can be filled up during the trial, and once it is filled up the trial shall be continued as if the new member had been on the Tribunal from the commencement of the trial, the necessity for a trial *de novo* is obviated, unless the Tribunal thought it fit to recall and re-examine any of the witnesses already examined. In the case of a vacancy arising before the trial, it was not specifically mentioned because no question of *de novo* trial arises. The work done before the trial begins is more or less of a routine character, and it was not necessary to emphasise that on the new member or Chairman joining the Tribunal it shall be considered as if he had been on the Tribunal from the appointment of the Tribunal.

Coming to another argument of the learned counsel for the respondent, it was argued by him in any case the appointment of two other members ought to have been made at one and the same time. As the appointment of Mr. A. N. Kaul and the advocate member were made at different times, the Tribunal is not legally constituted. We do not find anything in the Act which would go to show that the appointment of the two other members should be made at one and the same time. All that is provided is that the Tribunal shall consist of two other members of whom one shall be selected by the Election Commision from the list maintained under clause (a) and the other from the list maintained under clause (b) of sub-section (2) [*vide* sub-section (3) of section 86]. It is not provided that these two other members should be appointed by one and the same order at one and the same time. Mere appointment of a Chairman is enough to start the work of the Tribunal according to the second proviso to sub-section (3) of section 86. The two other members may be appointed at one and the same time or at different times before the trial begins. In the present case, the third member of the Tribunal, namely, Mr. P. L. Shome, was appointed before the trial began, and, therefore, it cannot be said that the Tribunal is in any way illegally constituted.

In our opinion, the objection has no force, and it is overruled.

(Sd.) KUMAR K. SHARMA, *Chairman.*

(Sd.) ANAND NARAIN KAUL, *Member.*

(Sd.) P. L. SHOME, *Member.*

ANNEXURE "B"

IN THE ELECTION TRIBUNAL, JAIPUR

ELECTION PETITION NO. 7 OF 1952

Shri Roop Chandra Sogani and others—*Petitioners.*

Versus

Rawat Man Singh and others—*respondent.*

PRESENT:

The Hon'ble Mr. Justice K. K. Sharma—*Chairman.*

Mr. A. N. Kaul—*Member.*

Mr. P. L. Shome—*Member.*

ORDER

Dated, the 31st March, 1953

In this Election petition, Shri Roop Chandra Sogani, a candidate for election to the Rajasthan Legislative Assembly from the Jamwa Ramgarh Constituency, and one Mangi Lal, an elector of the said constituency, as petitioners, seek to set aside the election of Respondent No. 1, Rawat Man Singh, on the ground that the nomination paper of the petitioner No. 1, Roop Chandra Sogni, had been improperly rejected by the Returnnig Officer, that the nomination paper of the respondent No. 1, Rawat Man Singh was illegally accepted and that the result of the election has been materially affected thereby. There are four respondents in the petition of whom the respondent No. 1 is the returned candidate; the respondents Nos. 2 and 3 also contested the election, but the respondent No. 4 withdrew his candidature.

After the Election Petition was transferred to the present Tribunal for trial, the petitioner No. 1, Roop Chandra Sogani appeared before the Tribunal on several dates, but the case had to be postponed as the service on all the respondents could not be effected, till on the 17th December 1952, the case came up for hearing. On that day, the petitioner No. 1 was present in person and the respondent No. 1 was represented by his counsel. The other respondents, though duly served, did not appear and an order was passed directing that the case should proceed *ex parte* against them.

On the application of the counsel for the respondent No. 1, time was given to him to file written statement upto 6th January 1953, and on this date the written statement was filed. The petitioner No. 1 was present in person along with his counsel, Shri D. M. Bhandari, and in his presence and in the presence of respondent No. 1's counsel issues were framed and the parties were directed to submit their respective lists of witnesses and also summonses and other requisites within a week if they wanted to summon their witnesses through court.

One of the issues in the case *i.e.* issue No. 6, raised a question as to the proper constitution of the Tribunal and arguments on the issue were heard in the presence of the petitioner himself and the counsel for the respondent No. 1, was decided in favour of the petitioner on the 21st January 1953. The arg on that issue were made by the petitioner himself.

After the decision of the issue, referred to above, the further hearing of the case was adjourned to 23rd January 1953. On the last mentioned date when the case was called on for hearing in the presence of the petitioner and the counsel for respondent No. 1, it was found that none of the parties had filed their lists of witnesses, as directed by the order of the Tribunal dated the 6th January 1953, nor did they take any steps to get any of their witnesses summoned through court. The parties were thereupon directed to file the said lists by the 30th January and also to file summonses and other requisites on that date, if they wanted to summon any of their witnesses through court. On the 30th January the petitioner No. 1 filed a long list of witnesses numbering 244 and by a separate petition prayed for summonses upon some of the witnesses and the Tribunal on the 31st January 1953, directed the issue of summonses as prayed for and fixed 16th February, 1953, for the petitioner's evidence and 17th February for the respondent's evidence.

On the 16th February 1953, when the case was called on for hearing, Shri H. P. Gupta, counsel for respondent No. 1, was present but the petitioner No. 1, Roop Chandra Sogani, was found absent, and his counsel, Shri D. M. Bhandari, and Shri B. S. Sharma, who were present said that they had no instructions. On an examination of the record it was found that the petitioner No. 2, Mangilal had not been served with notice of hearing of the petition after the receipt thereof in this Tribunal, and under the circumstances the case was adjourned to 27th February, 1953, and in the mean time notice was directed to be served on the said Mangilal informing him of the adjourned date of hearing and of the fact that the petitioner No. 1 was not prosecuting the case. On the 27th February 1953, the said Mangilal, though served with notice, did not appear and Shri B. S. Sharma, counsel for the petitioner No. 1, stated that he had got a letter from his client but he was not satisfied about the authenticity thereof and as such he wanted to ascertain from his client personally as to whether he wanted to proceed with the case and prayed for some time. Time was accordingly granted to him till the 5th March 1953. On the 5th March, an application was presented on behalf of petitioner No. 1 in the following terms:—

> "In the above case I hereby cancel and withdraw the authority given by me to Shri Daulatmal Bhandari and Brij Sunder Sharma, Advocate, to appear, act and plead on my behalf. The said Advocate will henceforth be not entitled to appear, plead and act on my behalf."

This application had been signed by Roop Chandra Sogani himself, but it was filed in court through Shri Damodarlal Bhargava, another Advocate and in the Abhibhashan Patra (Vakaltnama) which was filed engaging the said Shri Damodarlal Bhargava as Advocate on his behalf, the said petitioner empowered him only to present the abovementioned petition for cancellation of authority and power and gave him no other powers.

At this stage, Respondent No. 4 Shri Amritlal, entered appearance and on his behalf, Shri G. C. Kasliwal, Advocate, filed an application stating that he would have himself filed an election petition challenging the election of the respondent No. 1, but for the fact that the petitioners had presented the Election Petition, that as the petitioners were prosecuting the petition, and he had identical interests with the petitioners in the matter, he did not think it necessary to attend the court and allowed the proceedings to proceed *ex parte* against him, that it had now transpired that the petitioners had colluded with the respondent No. 1, and were absenting themselves from the trial and he, the respondent No. 4, was now desirous of prosecuting the case in the interest of justice and therefore prayed that the *ex parte* order against him be set aside and he be permitted to prosecute the case either as respondent or by transposing him to the category of a petitioner. He further prayed in the alternative that notwithstanding the default of appearance on the part of the petitioners, the case may be proceeded with and decided on merits and he be permitted to join in the trial.

Shri H. P. Gupta, Counsel for the respondent No. 1, objected to the aforesaid prayer of the respondent No. 4 and the matter was adjourned to the 9th March for hearing. Arguments of the parties were heard on the 9th and 10th March 1953, and the points which now arise for decision of the Tribunal are as follows:—

(1) Whether in view of the default in appearance on the part of the petitioners, the case should be dismissed for default.

(2) Whether the Tribunal can and should proceed with the trial of the case, in spite of the default of appearance on the part of the petitioners.

(3) Whether the *ex parte* order against the respondent No. 4 should be set aside and whether the said respondent should be allowed to take part in the proceedings in the case; and

(4) Whether the respondent No. 4 should not be transposed to the category of petitioner.

Points Nos. 1, 2 *and* 3.—Shri H. P. Gupta for the respondent No. 1 contends that in the circumstances of the present case, the provisions of Order 9, Rule 8 of the Code of Civil Procedure, would apply and in terms thereof the Tribunal has no option but to dismiss the case for default. He further contends that Order 9, Rule 8 C.P.C. applies not only to the first hearing of a case but to all hearings and as such the provisions of Order 17 will not apply to the case and that in any case, if Order 17 applies, Rule 2 thereof would apply and not Rule 3, as the adjournment was not at the instance of the parties, and none of the parties were called upon to do anything for further prosecution of the case. In support of his contention, Shri H. P. Gupta cited certain decisions of Election Commissioners, in connection with Election Petitions filed under the Old Law under the Government of India Act. These decisions are:—

(1) Burdwan Central General Rural Constituency—Mohitosh Saha *Versus* U. C. Mahtab and others reported in Sen and Poddar's Indian Election Cases at p. 249.

(2) Burdwan North East General Rural Constituency—Girindra Kumar Chatterjee *Versus* Rai Saheb Jogendra Nath Roy, reported in *Ibid* at p. 251.

(3) Feni Mohommedan Rural Constituency—Md. Sadek *Versus* Abdul Razzak, *Ibid* p. 310.

(4) Nawabshah South Mohammedan Rural—Ali Mohammad Khan *Versus* Sardar Bhadur Jan Md., *Ibid* p. 620.

Shri G. C. Kasliwal for the respondent No. 4, on the other hand, contended that Election Tribunals stand on a somewhat different footing than ordinary Civil Courts and had ample powers to pass such orders as the justice of the case may require and for a proper inquiry as to whether the election has been free and fair, and he referred to the following two cases:—

1) Dera Ismail Khan North Mohommedan Constituency—Amir Md. Khan *Vs.* Atta Md. Khan, reported in Doabia's Election Cases, Vol. I at p. 98.

2) Decision of the Patiala Election Tribunal (under the present law) in Lahri Singh *Vs.* Attarsingh & others (Badhra-Satnali Constituency) reported in India Gazette, dated 5th February 1953, Part II, Sec. 3, p. 315.

On the basis of the said decisions he argues that the Tribunal should proceed under Order 17, Rule 3 C.P.C. and proceed to decide the case on the merits notwithstanding the default of appearance on the part of the petitioners. On a reference to the facts of the case, as narrated above, it will be noticed that the issues in the case were framed on the 6th January 1953 and the hearing of one issue *viz.* Issue No. 6, began on the 7th January 1953 and the same was disposed of on the 21st January 1953, and the case was adjourned for hearing on the other issues. There is no doubt therefore, that the hearing of the case had begun and the subsequent dates on which the case came up, were for an adjourned hearing. It is well settled that Order 9 C.P.C. does not apply to a case where the plaintiff or defendant had already appeared, but has failed to appear at an adjourned hearing of the suit. In such a case the procedure, which applies, is laid down in Order 17, which deals with adjournments. Reference may be made in this connection to the case of Enatulla Basunia *Versus* Jiban Mohan Roy, I.L.R. 41 Calcutta Series p. 956.

Coming next to Order 17 C.P.C. the question arises as to whether Rule 2 or Rule 3 thereof would apply to the case. Rule 2 of that order lays down that, where on any date to which the hearing of the suit is adjourned, the parties or any of them fail to appear, the court may proceed to dispose of the suit in one of the modes directed in that behalf by Order 9 or make such other order as it thinks fit. Rule 3 of the said Order lays down that where any party to a suit to whom time has been granted fails to produce his evidence or to cause the attendance of his witnesses or to perform any other act necessary for the further progress of the suit, for which time has been allowed, the Court may notwithstanding such default, proceed to decide the suit forthwith.

The effect of Rule 2 of Order 17, is that it assimilates the procedure in cases of default of appearance at an adjourned hearing, with that in cases in which there is default of appearance at the first hearing, and the remedies prescribed under Order 9 are available to the aggrieved party. Rule 3 of the Order 17, gives an additional power to the court to proceed to decide the suit forthwith, without granting further adjournment and the effect of such decision would be that it would be a decree on the merits and appealable as such and the remedies prescribed under Order 9 in respect of *ex parte* hearings and *ex parte* decrees will not be available to the aggrieved parties.

The circumstances to which Rule 2 or Rule 3 of Order 17 would respectively apply have been the subject of judicial decisions and it has been held in above mentioned case of Enatulla Besunia *Vs.* Jiban Mohan Roy that the distinction between the two rules is that the former rule applies to hearings adjourned at the instance of the Court while the latter applies to hearings adjourned at the instance of a party to whom time has been allowed to do some act to further the progress of the suit but who has made default.

It is thus clear that whether Rule 2 or Rule 3 applies to a case, the Court has got three alternatives (1) to dispose of the suit in one of the modes directed in that behalf in Order 9, (2) to proceed to decide the suit forthwith, or (3) to pass such other order as it thinks fit. The remedy of the aggrieved party against any such order would depend upon the circumstances as would justify the application of the provisions of Rule 2 or Rule 3. It may be pointed out that the word used as regards the power of the court in either case is "may" and not "shall', so that the court is not bound to dismiss a suit when a default occurs, as in the case under Order 9, Rule 8.

When on the 16th February 1953, to which date the case was fixed for the hearing of the remaining issues, the petitioner No. 1 was found absent, the Tribunal passed an order directing issue of notice on the petitioner No. 2, who, it was then discovered, had not got notice of the hearing at all, and that may be taken to be an order under the last clause of Order 17 Rule 2. No final order of dismissal, even if permissible, could be passed on that day. The Tribunal was not bound to apply the provisions of Order 9 to dismiss the case and it did not do so. In pursuance of the Tribunal's last mentioned order, when on the next date, the Counsel for the petitioner No. 1 prayed for time to ascertain the real intention of his client there was no real non-appearance and adjournment to the next date *i.e.* the 5th March, can be said to be at the instance of the petitioner No. 1. On the 5th March, the petitioner No. 1 also appeared through an Advocate though for a limited purpose. At that stage, the respondent No. 4 appeared and applied to be allowed to take part in the proceedings and to be transposed to the category of the petitioner. The interests of the respondent No. 4 and the petitioners of the Election Petition were identical and in view of the prayer made by the former and in the circumstances that have happened in the case, it is doubtful whether it is a case of non-appearance at all, meriting forthwith dismissal for default.

Even if it be taken that the case does not come under Order 17 Rule 3, it certainly comes within Order 17 Rule 2. It was argued by the learned counsel for the respondent No. 1, that Order 17 Rule 2 applies only if the adjournment is granted at the request of the party. It was argued that looking to the words of Rules 1 and 3 of Order 17 it appears that Rule 2 also applied to a case where adjournment is given at the instance of a party. We are unable to accept this contention. The words in Rule 3 are "Where any party to a suit to whom time has been granted fails to produce his evidence or to cause etc. .....", whereas the words used in Rule 2 are simply "to which the hearing of the suit is adjourned". Rule 2 does not say that the suit is adjourned at the instance of any party. There is no reason why we should qualify the words "adjourned with any words like at the instance of party etc." Thus, in any case, the provisions of Order 17 apply and the Tribunal was not bound to dismiss the petition either on the 16th February 1953, or on the 5th March 1953. It was in the discretion of the Tribunal to adopt any of the modes provided in Order 9 or to make such other order as it thought fit. It was contended by the learned counsel for the respondent No. 1 that such other order could be only of an adjournment. We do not think that the expression "such other order" in Rule 2 should be narrowed down to mean only an order of adjournment. In the present case, before any final order could be made in the case, one of the respondents who claims to be as much interested in the petition as the petitioners themselves, appeared before the Tribunal and expresses his desire to prosecute the case. It cannot be denied that if an order of *ex parte* hearing had not been made against him he had a perfect right to appear in the case and produce whatever evidence he wanted to produce on the issues in the case. There are several kinds of civil suits in which the defendants are as much interested in the plaintiff's case as the plaintiff himself. They are

partnersip suits, partition suits etc. It cannot be denied that in such suits fendant may produce evidence in support of the plaintiff's case. Election cases too are, in our opinion, of the same nature. Election petitions are not the concern merely of the parties, as in the case of an ordinary Civil suit. They are matters of public importance involving the rights of the entire constituency and it has been held that the summary dismissal of an election petition for non-appearance of the petitioner on the analogy of dismissing a suit in default for non-appearance of the plaintiff under Order 9 Rule 8 C.P.C. would be contrary to the spirit of the election law. (*vide* Dera Ghazi Khan North Mohammadan Constituency—Amir Md. Khan *Vs.* Atta Md. Khan—Doaba's Election Cases, Vol. L. P. 98).

Reference may also be made to the case of Lahri Singh *Vs.* Attar Singh (Badhra-Satnali Constituency) decided by the Patiala Election Tribunal and reported in the India Gazette dated 5th February, 1953, Part II, Section 3, at p. 315. In this case the respondent No. 6 had filed a written statement supporting all the grounds made by the petitioner and at the stage of the trial he claimed the right to produce evidence in support of the grounds made by the petitioner in addition to what evidence the petitioner himself might choose to produce. The ground on which this prayer on behalf of the respondent No. 6 was made was that due to certain influences, the petitioner was likely to join hands with the returned candidate and that the petitioner was indifferent to the proper prosecution of the petition and was holding back the available evidence in support of the petition. The Tribunal by its Order, which is printed as Annexure "A" at p. 325 of the report, held that the respondent No. 6 was entitled to produce evidence in proof of the grounds already made by the petitioner, and the respondent No. 6 was allowed to adduce evidence in support of all the grounds raised in the petition. The reason for the decision was that the Tribunal were of the view that the provisions in the Representation of the Peoples Act, 1951 (hereinafter to be referred to as the Act) as regards election petition were made with the purpose of ensuring that elections should be free and fair and that elections, which are not found to have been so, should be set aside. Then referring to the relevant sections of the Act, regarding the persons who have the right to call an election in question, the wide powers given to the Election Tribunals to collect all the necessary materials and to examine any person *suo motu*, the provisions regarding withdrawal and abatement of election petition, the power of the Tribunal to refuse an application for withdrawal if it appeared to be induced by unlawful bargain or consideration, the Tribunal state at p. 327 as follows:—

> "The Legislature could not, therefore, have intended to leave the Tribunal powerless in the matter of having a fair and effective trial of the petition in order to determine if the election had been fair and free or not, when as is alleged in this case, the petitioner, though not openly withdrawing the petition is trying collusively to keep back the available evidence for substantiating the grounds taken in the petition. To shut out reception of such evidence on the ground that it was being produced not by an allegedly unwilling petitioner but by one of the respondents, would be tantamount to encouraging such petitioner in his unhelpful attitude towards the Tribunal and in his attempt to prevent a fair and effectual trial of the election petition."

In the four cases relied on by the learned counsel for respondent No. 1, the question of dismissal for default did not arise in the manner and in the circumstances that have arisen in the present case before us. No other interested party offered to carry on the proceedings and prove the case made out in the petition. The first two cases *viz.* (1) Mahitosh Shah *Versus* U. C. Mahtab and others, Burdwan Central General Rural Constituency, Sen and Poddar's Indian Election Cases, p. 249 and (2) Girindra Kumar Chatterjee *Versus* Rai Saheb Jogendra Nath Roy—Burdwan Division North-East General Rural Constituency 1940—*Ibid* p. 251,—were cases of simple non-appearance of the petitioners, and the Tribunal had no option but to dismiss them. No question was raised that Order 17 Civil Procedure Code applied. In the third case—*viz.* Md. Sadeque *Versus* Abdul Razzaque Maulvifeni Muhammadan Rural Constituency, 1937,—*Ibid* p. 310, the petitioner was asked to furnish additional security and he failed to do so. The Tribunal, therefore, held relying on the Hosangabad case (Hammond p. 407), that the principle laid down in Order 17, Rule 3, and Order 25, Rule 2 C.P.C. would apply and dismissed the petition "on the ground that the security required has not been furnished". In the fourth case *viz.* Ali Mahomed Khan Atta Mohamed Khan *Versus* Sardar Bahadur Jam Jan Mahomed Khan Mahomed Sharif Juneja—Nawabshah South Muhammadan Rural Constituency, 1937—*Ibid*, p. 620, an application for withdrawal of the petition was filed jointly by the two parties, but the Tribunal refused to grant leave to withdraw as it was of the view that there was an element

of bargaining connected with the withdrawal petition. The Tribunal held no express provision has been made in the Rules for a case like this; Ore Rule 8, C.P.C. would apply and holding that the absence of the petitioner amounts to failure to support the petition and as the petitioner does not claim the seat, the Tribunal had no power to go into the recrimination petition. In that case there was no question whether the case came under any of the rules of Order 17. Taking it for granted that Order 9 C.P.C. applied the Tribunal held that as the default had been committed by the petitioner under Rule 8, the Tribunal had no power but to dismiss the petition. No question arose as to whether any of the respondents, who was referred to prosecute the petition, could be allowed to do that or not.

On a reference to the various provisions of the Act, which we shall presently notice we are disposed to agree with the views of the Patiala Election Tribunal in the case of Lehri Singh *Versus* Attar Singh, quoted above, so far as it goes to show that in case the petitioner is found negligent or misbehaving, anyone of the respondents, who wants to support the plaintiff's case, may be allowed to do that. By section 82 of the Act, it has been provided that all the duly nominated candidates shall be joined as respondents to the petition. Under section 90 after a copy of the petition is published in the Official Gazette any other candidate, who has not been joined as a respondent can, at any time within 14 days after such publication come in and claim to be joined as a respondent and the Tribunal shall join him as respondent subject to the provisions of security for costs from a respondent u/s 119. It is thus clear that the legislature wanted to make a provision to give an opportunity to all the duly nominated candidates as well as other candidates who might apply u/s 90(1) to take part in the proceedings arising out of the election petition. It is not necessary that all the respondents should be interested in defending the case against the petitioner. Some of them may be interested in the success of the petition and as a matter of fact all the candidates excepting the successful ones, are normally interested in the success of the petition. If, therefore, anyone of such respondents wants to support the petition, the door cannot be shut against him. We should say that it is not only proper but necessary in the interest of justice that in a case where the petitioner shows slackness or deliberately wants to defeat his petition a respondent, who expresses a desire to support the petition, should be given full chance to support it. From a careful reading of the Act we find that it has been the anxiety of the legislature that an election petition should not be defeated on account of the indifference or deliberate action of the petitioner. That is why provision has been made in the case of withdrawal of petition that the Tribunal should not allow the withdrawal if it thinks that such application has been induced by any bargain or consideration which ought not to be allowed. When an application for withdrawal is made, the Election Tribunal has been required to publish notice of withdrawal in the official gazette and to give notice to all other parties to the petition of the date of hearing of the application for withdrawal. Even if withdrawal is granted a further notice of withdrawal is required to be published in the official gazette and if within 14 days of such publication a person, who might have been a petitioner, comes forward and presses to be substituted in place of the petitioner the Tribunal shall be bound to substitute him, of course on such terms as it thinks fit.

It was argued that there are specific provisions for allowing interested persons to come forward and be substituted for the petitioner. But in a case of default no such provision has been made. It is true but we have referred to the provisions relating to the withdrawal simply to emphasize that the anxiety of the legislature was that an election petition should not be defeated like an ordinary civil suit by the negligence or misconduct of the petitioner. We are not adopting the procedure laid down in the case of withdrawal of petitions. In the present case we are concerned with the fact whether we should allow a party who is already on record to take such steps as he thinks proper for enabling the Tribunal to do justice in the case. We, therefore, see no reason why we should not make an order allowing the respondent No. 4, Amrit Lal to take part in the proceedings.

It was finally argued that at any rate an *exparte* order has been made against him and it cannot be set aside unless valid grounds are made out for the setting aside of the order. There is the view of some High Courts that when only an *exparte* order has been made against a defendant but no decree is passed the defendant can come in and take part in the proceedings at any stage before the case is decided. Of course, it has been held that he would be allowed to take part in the proceedings from the stage at which he appeared. Unless the *exparte* order has been set aside he would not be relegated to the position which he might have occupied in the absence of the *exparte* order. On this view we can allow the respondent No. 4 to take part in the proceedings from the stage at which he

a red and prayed for being allowed to take part in the case even without set-t aside the *exparte* order. The only proceedings that had taken place before he came in was that an issue relating to the constitutionality of the Tribunal had been decided. No hearing of any other issues had begun much less concluded before he applied to be allowed to take part in the case. But even if it be necessary to set aside the *exparte* order before he is allowed to take part in the proceedings we are satisfied that he has shown a good cause for his non-participation in the case before he ceased to take any interest in the case. He is as much interested both as a voter as well as a candidate in the success of the petition as the petitioners themselves. He had no necessity to come in and prosecute the case so long as the petitioners were taking interest therein, as he had only to support the petition and not to oppose it. When he found that the main petitioners were trying to defeat the petition by their conduct, the necessity arose of his coming before the Tribunal for the prosecution of the petition. There can be no doubt that the petitioner is deliberately trying to defeat his petition and is not fair enough to give an opportunity to the other respondents or other persons who might have been entitled to file the election petition to prosecute the case in the case the petitioners had applied for withdrawal. It is not a case where the petitioner is unable due to any sufficient cause to appear in court. He made an application through a counsel to have his previous Vakalatnama in favour of Shri B. S. Sharma and Shri D. M. Bhandari cancelled and was cautious enough to mention in his Vakalatnama in favour of Mr. Damodar Lal Bhargava that he was engaged only for the purpose of having the previous Vakalatnama in favour of Messrs. B. S. Sharma and D. M. Bhandari cancelled. From this conduct of his it is quite clear that he wants to throttle the Election Petition and at the same time wants to keep other interested persons from coming in. Under the circumstances it would be very unjust to the constituency to disallow a party in the case from looking after the interests of the constituency and seeing that justice is done on merits in the case. To our mind the respondent No. 4 has been able to show good cause for having the *exparte* order set aside.

Point No. 4.—In view of the fact that we are setting aside the *exparte* order and allowing respondent No. 4 to take part in the proceedings we do not consider it necessary now to go into the question whether he can be transposed as a petitioner in the case.

The application of respondent No. 4 is allowed, the *exparte* order made against him is set aside and he is allowed to prosecute the case provided he files cash security of Rs. 300, within a week from today for any probable costs of the respondent No. 1 in case the petition is dismissed.

(Sd.) KUMAR K. SHARMA, *Chairman.*
(Sd.) A. N. KAUL, *Member.*
(Sd.) P. L. SHOME, *Member.*

ANNEXURE 'C'

IN THE ELECTION TRIBUNAL, JAIPUR

ELECTION PETITION No. 227 OF 1952

7

Shri Roop Chandra Sogani and another—*Petitioners.*

Versus

Rawat Man Singh and others—*Respondents.*

Application dated 14th November, 1953, on behalf of Rawat Man Singh, raising an objection that Shri Amrit Lal respondent No. 4, who was allowed to persecute the case provided he deposited Rs. 300 within a week on 31st March, 1953, has not done so, and, praying that he be not allowed to proceed with the case.

(Date of Order, 14th November, 1953)

PRESENT

The Hon'ble Mr. Justice K. K. Sharma—Chairman.

Mr. A. N. Kaul—Member.

Mr. P. L. Shome—Member.

Mr. G. C. Kasliwal for Shri Amrit Lal.

Mr. H. P. Gupta for Rawat Man Singh.

This is a petition by Rawat Man Singh, respondent No. 1. The respondent No. 4, Amrit Lal, was ordered to deposit Rs. 300 in cash within a week from the

date of the order, which was 31st of March, 1953. The contention of Mr. Gupta on behalf of respondent No. 1 is that according to the order respondent No. 4 could deposit the cash security only upto the 6th of April, 1953, and as he deposited the security on the 7th, he did not comply with the order of the Tribunal, and, therefore, he is not entitled to take advantage of that order. In support of his contention, Mr. Gupta cited the rulings in the cases of Commissioner of Income-tax *v.* Ekbal & Co. (1) and Secretary of State *v.* Malik Amir Mohammad Khan (2). On behalf of the respondent No. 4, Mr. G. C. Kasliwal relied upon the decisions in the cases of Puran Chand *v.* Mohd. Din and others (3) and Ramchandra Govind Unavne *v.* Laxman Sevleram Ronghe (4), as also upon the wording of section 9 of the General Clauses Act. It was argued that the principle enshrined in section 9 of the General Clauses Act was a salutary one, and even in cases where the General Clauses Act did not apply in terms, the principle laid down in the section ought to be applied, and has, therefore, been applied in the two rulings cited above.

We have considered the arguments of both the learned counsels. Section 9 of the General Clauses Act lays down that in any Central Act or Regulation made after the commencement of the Act it shall be sufficient for the purpose of excluding the first in a series of days or any other period of time to use the word 'from', and, for the purpose of including the last in a series of days or any other period of time to use the word 'to'. If the case were governed by section 9 of the General Clauses Act, there would have been no difficulty whatsoever. But in the present case, we have not to interpret the word 'from' in any Central Act or Regulation. Therefore, section 9 of the General Clauses Act does not apply to the present case in terms. However, it has been held in the case of Ramchandra Govind Unavne *v.* Laxman Sevleram Ronghe (4) quoted above, that

> "It is desirable for the sake of unformity that the same interpretation should be given to an expression occurring in a judicial order as would be given to it in a statute under Section 9, General Clauses Act. Where therefore in an execution of a decree judgment-debtor is asked to deposit a sum within fifteen days from a certain date, that date has to be excluded."

In the Lahore case of Puran Chand *v.* Mohd. Din and others (3) also quoted above, it was held that

> "The General Clauses Act embodies a principle of equity which should be applied to decrees apart from statutes. As the date from which one reckons may be either inclusive or exclusive, the period to be reckoned should exclude the day mentioned."

In that case the decree was for Rs. 6,000, and a condition was incorporated in the decree that the said amount be deposited in court "within three months from to-day", the date of the decree being 18th April, 1933. The deposit was made on the 18th of July, 1933, and it was held that it was within time. These two decisions are direct authorities in support of the contention of the learned counsel for respondent No. 4. In neither of the rulings cited on behalf of respondent No. 1 the Court was required to interpret the words "within so many days from to-day". In the case of Commissioner of Income-tax, *v.* Ekbal & Co. (1) the Court was concerned with interpreting the words "not less than 30 days" in section 22(2) of the Income-tax Act, and it was held that "not less than 30 days" was outside the two points of time, that is the point at which the period began and the point at which it expired. The Court was not required to interpret the words "within 30 days from a certain date". The only thing which was observed was that there was a difference between the two expressions "within 30 days" and "not less than 30 days". This ruling is, therefore, no authority for the point before us. As regards the ruling of the Lahore High Court in the case of Secretary of State *v.* Malik Amir Mohammad Khan (2) cited on behalf of respondent No. 1, there is nothing in the judgment which goes to interpret the expression "within so many days from a particular date". There notice of appeal was served on the respondent on the 22nd of September, 1932. The respondent did not file any cross-objections within one month of his service. It appears that thereafter the interest of one of the respondents devolved on one Malik Amir Mohammad Khan, and the appellant presented an application under Order XXII, Rule 10, of the Code of Civil Procedure for leave to continue the appeal against him personally, and for issue of notice to him. Notice was accordingly issued to Malik Amir

(1) A.I.R. 1945 Bombay 316.

(2) A.I.R. 1935 Lahore 653.

(3) A.I.R. 1935 Lahore 291.

(4) A.I.R. 1938 Bombay 447.

Muhammad Khan, and it was served in February, 1935. Within one month of the service, he filled cross-objections. It was held that the cross-objections were not within time, as they were not filled within one month from the date of the service, that is, 22nd September, 1932, of the previous notice. This ruling too is, therefore, no authority upon the interpretation of the words "within so many days from a particular date".

To our mind the interpretation put upon the words, which are the subject matter of interpretation in this case, in the Lahore and Bombay rulings cited on behalf of respondent No. 4 is the correct interpretations, and should be adopted. The objection to our mind has no force and is dismissed.

(Sd.) KUMAR K. SHARMA, *Chairman.*

(Sd.) A. N. KAUL, *Member.*

(Sd.) P. L. SHOME, *Member.*

[No. 19/237/52-Elec. III/485.]

By Order,

P. R. KRISHNAMURTHY, Asstt. Secy.

PRINTED IN INDIA BY THE MANAGER, GOVT. OF INDIA PRESS, NEW DELHI
AND PUBLISHED BY THE MANAGER OF PUBLICATIONS, DELHI. 1954